

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - August 12, 1970

Appeals No. 10291 and 10485 Go Go Investment Corporation on
behalf of Rose M. Leverich, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and unanimously carried,
the following Order of the Board was entered at the meeting of
August 18, 1970.

ORDERED:

That the appeal from a decision of the Zoning Administrator
given May 7, 1970 denying application for a certificate of occu-
pancy for restaurant seating less than 50 - delicatessen at pre-
mises 1661 - 35th Street, NW., Lot 217, Square 1291, be denied.

FINDINGS OF FACT:

1. The subject property is located in an R-3 District.
 2. The property is improved by a two story brick structure
with basement. The Hoya Restaurant is operated in the property
under Certificate of Occupancy B70955 for a restaurant.
 3. In Appeal No. 10291 appellant requested permission to
change the use of the property from a restaurant to a restaurant
and delicatessen with carry-out.
 4. Appellant alleges that approximately ninety percent (90)
of his business is carry-out and has been since prior to 1957.
 5. There was considerable opposition from the neighborhood,
principally on the ground that the present carry-out operation
generates a great deal of trash, rats and a parking problem.
 6. The Board in executive session on January 20, 1970
deferred action on this appeal until March 24, 1970 at which time the
appeal was denied.
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7. Appellants on April 15, 1970 requested reconsideration and/or rehearing alleging that both uses, the restaurant and delicatessen with carry-out, are nonconforming because they antedated adoption of the Zoning Regulations on May 12, 1958, and that the occupancy permits that were issued on the subject property were unobtainable until April 14, 1970 because between 1920 and the present date the address of subject property changed from 1881 to 1661 and the lot numbers were also changed, for which reasons the issues were not properly framed at the public hearing and the evidence was insufficient to render a complete and fair disposition of the case.

8. There was considerable opposition from the neighborhood and the Georgetown Citizens Association to the granting of a rehearing, on the grounds that the Certificates of Occupancy of the property were available at the original hearing and that the character of the nonconforming use changed back and forth over the years without Board approval.

9. At a public hearing on April 15, 1970 the Board requested that the appellant submit a brief describing the evidence which appellant would present at a rehearing, should one be granted. In response, appellant submitted a letter of April 20, 1970 (See Exhibit No. 39).

10. The Board in executive session on April 21, 1970 deferred action, suggesting that appellant, based on his letter of April 20, 1970 (Exhibit No. 39) should submit an application to the Zoning Administrator for the certificate of occupancy he desired, and if that certificate of occupancy were given, no rehearing would be necessary.

11. Pursuant the Board's suggestion, appellant applied for the certificate of occupancy, which was denied by the Zoning Administrator (See Exhibit No. 40).

12. By letter dated May 13, 1970 appellant again requested that their petition for a rehearing be granted.

13. In executive session June 23, 1970 the Board denied without prejudice the request for rehearing.

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14. Appellant thereupon appealed the Zoning Administrator's decision to the Board (Appeal No. 10485) that the subject property is both a restaurant and a carry-out, and has been a continuing nonconforming use from 1920 to the present that such uses were lawfully existing nonconforming uses at the effective date of adoption of the Zoning Regulations on May 12, 1958, and that the nonconforming uses were preserved by the Savings Clause found in Section 7102.1 of the Regulations governing nonconforming uses and nonconforming structures.

15. Appellant also alleged that one part of the problem lies in the certificate of occupancy bearing the date 1956 (Exhibit No. 18Q) which appears inconsistent on its face. Apparently, a clerk, without authority of this Board, changed the application for the certificate of occupancy from "Delicatessen and Light Lunch" to "Restaurant seating less than 50 people."

16. At the public hearing, the Zoning Administrator stated, in part, that a nonconforming use is based on the last issued certificate of occupancy, and that the last one of record in his department was issued August 28, 1968 to Judith D.L. Bonnon and Thomas Parks as a restaurant seating less than 50 persons. The Zoning Administrator also stated that under the Zoning Regulations (Section 7104.2) he has no power to change a nonconforming use, and that only the Board of Zoning Adjustment has that authority.

17. There was considerable neighborhood opposition to the granting of this appeal on the grounds that under Section 7104.3 when an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to nonconforming or less restrictive use.

OPINION:

We are of the opinion that the Zoning Administrator's ruling must be upheld. The evidence of record in this case is in conflict as to whether the use of the subject premises was a legally existing nonconforming use as a restaurant-delicatessen at the effective date of the Zoning Regulations as prescribed in Section 7102.1.

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OPINION Cont'd:

We find that the subject property as shown by the records submitted was a "restaurant seating less than 50 persons." and we hold that the Zoning Administrator may rely on that use as the last permitted use of record, and that after this determination is made a certificate of occupancy may be issued to conform to the last record use.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By: _____



PATRICK E. KELLY
Secretary of the Board